

**UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF MICHIGAN**

BRENDA TRACY, LLC, SET THE EXPECTATION,
A NON-PROFIT ORGANIZATION; JANE DOE 1;
JANE DOE 2; JANE DOES YET TO BE IDENTIFIED,

Plaintiffs,

Case No. 23-cv-1102
Removed from the 30th Judicial Circuit
Court, Ingham County
(Case No. 23-0671-CZ)

v.

AGUSTIN ALVARADO; MEL TUCKER; JENNIFER Z. BELVEAL;
JOHN DOE(S) AND JANE DOE(S) IN POSSESSION OF RECORDS
WHOSE NAMES ARE KNOWN ONLY TO DEFENDANTS; FOLEY &
LARDNER, LLP,

Defendants.

***** EXPEDITED CONSIDERATION REQUESTED*****

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COMBINED MOTION AND BRIEF FOR REMAND TO STATE COURT

NOW COMES Plaintiffs Set the Expectation, Jane Doe 1, Jane Doe 2, and Jane Does yet to be identified (hereinafter collectively “Plaintiffs”), by and through their attorney Eric Delaporte of Delaporte Lynch, PLLC, and files this combined Motion and Supporting Brief for Remand to State Court. In support of their Motion and Brief, Plaintiffs state as follows:

1. Under 28 U.S.C. § 1447(c), a party may motion for remand based on any “defects” in the removal process within 30 days after filing of the Notice of Removal.
2. Remand of a case to state court from federal court is appropriate “when the principles of abstention necessitate state, rather than federal, review.” *Snyder v. Shelby Cty. Bd. of Educ.*, No. 2:14-cv-02048-dkv, 2014 U.S. Dist. LEXIS 195376, at *3 (W.D. Tenn. Mar. 27, 2014).
3. Plaintiffs’ First Amended Complaint contains eight Counts, seven of which are State law causes of action, and one of which is a Federal law cause of action.
4. Notably, Plaintiffs seek to dismiss Count III, the sole Federal Claim, through its Request for Leave to Amend the Complaint, which Plaintiffs just filed pursuant to Fed. R. Civ. P. 15(a)(2), which leave should be freely given in accordance with the Rule and long standing tradition. *See, ECF No. 5.*
5. A Defendant may only remove an entire action that includes both federal and state law claims if “the action would be removable without the inclusion of the [federal question] claim. . . .” 28 U.S.C. § 1441.
6. Plaintiffs’ Complaint is not removable without the inclusion of the sole federal claim.
7. By removing the sole federal claim, respectfully, this Honorable Court no longer retains subject matter jurisdiction, and should remand the entire action back to the State Court.

8. Expedited consideration is warranted, as the Emergency Temporary Restraining Order issued *ex parte* by the Honorable James S. Jamo of the 30th Judicial Circuit Court for the State of Michigan based on Plaintiffs' showing of "immediate and irreparable harm based upon the publication of protected, personal, private, and sensitive business information related to sexual assault survivors and employees (both living and deceased), which was gathered in violation of Michigan law" is set to expire on October 20, 2023. **ECF No.**

5-2.

9. Plaintiffs have been unable to hold a hearing on the Preliminary Injunction (Count I of Plaintiffs' Original and First Amended Complaint), because of Defendants' Removal the day before the Preliminary Injunction hearing scheduled for October 17, 2023, in the 30th Circuit Court was to be heard. ***Id.***

10. If this Honorable Court fails to act expeditiously, the Emergency Temporary Restraining Order will expire before Plaintiffs are able to have their Motion for a Preliminary Injunction heard, thus, potentially exposing 20,000 business records, personal records, protected, personal, and private records, including records related to victims of sexual violence.

11. Plaintiffs respectfully request that this Honorable Court grant their Request for Leave to Amend Complaint (eliminating the sole federal question), find that the Court lacks subject matter jurisdiction, and remand the remaining State law claims to the Michigan 30th Judicial Circuit Court.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant their Motion to Remand to State Court.

Dated: October 17, 2023

DELAPORTE LYNCH, PLLC

By:


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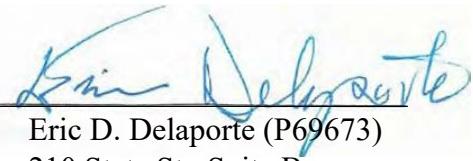
Certificate of Compliance

I hereby certify that the word count of the above document, six hundred and ninety-four (694) words, does not exceed the limit of four thousand and three hundred (4,300) words specified in LCivR 7.3(b)(i), absent the case caption, cover sheets, any table of contents, any table of authorities, the signature block, attachments, exhibits, and affidavits. I used version 16.74 of Microsoft Word for Mac to calculate the above word count.

Dated: October 17, 2023

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Certificate of Service

I hereby certify that on October 17, 2023, I filed a copy of Plaintiffs' Motion for Remand to State Court inclusive of Exhibits through the Court's Electronic Case Filing (ECF) System. As such, Notice of this filing will be sent to the counsel of record for all Defendants registered with the Court's ECF System.

Dated: October 17, 2023

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